

‘Parking Lot’

All-Foreclosure Mediator Event

November 2, 2015

Following are the individual items written on post-its by the mediators during the event. They include questions and suggestions for Commerce. They are grouped into categories for ease of reading.

Languages

- When will Commerce have notice documents translated into Spanish, Korean, Chinese, Ukrainian, etc.?
- How about a sheet to give non-English instructions on critical dates
 - Need to have non-English speaker bring an interpreter with them
 - Info on AT&T language line
- Forms from Commerce in languages other than English
- Develop list of language resources to put on Commerce’s website
- Provide a list of interpreters for language barriers
- Commerce should have initial referral letter in Spanish as well as English!
- Whose responsibility is it to pay for the interpreter?

NPV

- Commerce needs to promulgate clear BRIGHT LINE rule for both parties to promptly supply NPV inputs and their NPV calculations before mediation
- Folks at our table wonder what NPV analysis gives Commerce in terms of value. Servicers say it usually doesn’t factor in to the decision. It’s not in law (only inputs). What does Commerce do with it? Some lawyers refuse to do it, say they don’t have to.
- What do you do if the bank uses their own NPV input analysis method and it comes up with fail vs. FDIC analysis?
- When, if at all, is it appropriate for the mediator to mention or ask about documents like NPV results when neither party brings up the topic during mediation?
- Should Commerce guideline address NPV analysis? Does it currently?

Surveys

- Borrower/Beneficiary survey – Out of the 15% response, what percentage was borrower response?
- Survey monkey is not a good fit for a partially sighted person – so the summarization of survey is very helpful
- Please break down survey by borrower/beneficiary. Q# Borrower. Q# Beneficiary
- Please differentiate survey responses between borrower and beneficiary survey re: satisfaction with mediators

Good Faith/Not in Good Faith

- Please find out what actually happens when “not in good faith” certification is filed.
 - Mods? Etc. Lots of hearsay info being floated around
- Once you decided to require a mediator to make a determination of “good faith,” it is no longer a “mediation.” Can we look at calling it something else?
- Case study 1 – Does a TPP constitute an agreement? If it does, is there a way for a mediator to make a finding regarding good faith? Does it serve anyone to make a finding?
- Evaluation of good faith – can you make a distinction between ‘principal’ and ‘representative?’
 - I.E. between borrower behavior and counselor behavior?
 - And between beneficiary behavior and their rep’s behavior?
- In what ways does a beneficiary lack of good faith help borrowers? Hurt beneficiaries?
- Will issuing beneficiary in bad faith result in something good for the borrower? Any evidence?
- We want to be able to determine “Not in good faith” even when there is an agreement reached
- Can we get breakdown statistics on bad faith borrower vs. beneficiary and reasons why?
- Agreement reached, but both parties in BAD FAITH. How to report???
- If there is agreement, but also bad faith, how should the bad faith be reported and on what document?
- Does Commerce want us to note BAD FAITH if there is clearly bad faith but there is an agreement reached? And if so, for what purpose?
- How do I assign a lack of good faith ruling on certification if a modification was given? Does this help with the reporting or tracking?
- Consequences of bad faith for (1) borrowers and (2) beneficiary
- Would be nice to get some hard, accurate data as to how many (and percent) beneficiary bad faiths result in a modification.

ADA

- Add to Commerce’s guidelines (ADA section) accommodations for deaf or blind clients during mediation
 - Interpreting ASL
 - Who bears the financial burden of this?
- How does Commerce deal with language in regard to ADA compliance? Sign language?

Certification Form

- Please allow a finding of bad faith for both sides on the certification form
- Be able to download the certification form from the Commerce website
- Certification request – allow for agreement reached and not in good faith
- Why does the certification form have a drop-down choice for the borrower that says participation “in person,” “by phone,” and “by video” if the borrower must be there in person??
- Please let us check “not in good faith” for both sides
- On cert form – sometimes we get P&I figures and principle is not broken out on form
- Cert request – allow for less typing on contact info – why must we type info you provided to us?

- Please give us more guidance on filling out the certification when there is a loan mod. What box do I check when they add on unpaid amounts at the end – call it forbearance? What amount?
- Cert. request – allow for agreement reached – other (terms differ from sub-categories provided)

Complaints

- When a complaint is filed during an on-going mediation and it gets resolved so no formal complaint ever materializes, should the mediator send a report to Commerce since Commerce doesn't know what transpired?
- Can the mediator or case manager file a complaint against a borrower rep or beneficiary rep?
 - HFC
 - WSBA
- Both parties complained to Commerce. What does Commerce do with the complaint? How is this handled now and in the future?
- Clarify the types of complaints - percentages from Brigid's presentation (didn't add to 100%) – **DONE; changes made to Commerce presentation posted on website**

Borrowers Rep

- Borrower's representative should be a certified housing counselor, not an attorney with no training
- How do you hold the borrower's rep accountable without penalizing the borrower?
 - Complaint process to HFC
 - Unfortunately may not be able to avoid
- How do we realistically approach borrowers that are under-represented to give them other options?
- Attorneys refuse/cannot contact borrower directly (unless borrower's attorney approves) due to Lawyers Code of Ethics
- How does Commerce urge unrepresented homeowners to hire counsel? Should that be an important function?

Email/Snail Mail

- Does Commerce want to be on email loops, other than those that have scheduling info (Notice of Scheduling, Cancellations, and Reschedule)?
- If borrower (not their rep) does not have email, do we send all notices by snail mail?
- So, we send everyone the mediation scheduling notice – email ok. Is there anyone that you must mail it to as well? I thought borrowers and beneficiary needed one by mail as well. Others at my table say no.
- When you say document everything, do emails that have been sent suffice or should we keep journals?

Increased Income

- We need guidelines on change of circumstance (increased income) during the process – can the mediator force new application of beneficiary?
- How can we help people who were unemployed, got a new great job, so beneficiary denies modification due to income?

Mediator's Role

- A theme that keeps coming up in many different questions/topics – Where is the line between us, as mediators, being neutral and not jumping too far vs. stepping in to move things forward?
 - Example: Asking for NPV, calling poorly represented borrowers, asking questions that borrowers need but rep doesn't

Scheduling/Re-scheduling and Fees

- Is it appropriate to ask the party who is requesting the reschedule if they are willing to pay the full reschedule fee?
- By Commerce standards: What is the difference between continuances, reschedule, and mediator's discretionary second session?
- How much discretion do different mediators have in terms of rescheduling fees and practices – given consistency is desired?
- When are stakeholders going to make a decision about new (higher) fees?

Commerce Data

- In Commerce's reporting, outcomes are categorized by whether "mediation occurred." That is wrong. What is correct is to say whether a mediation "session occurred." Will you change your wording so it is correct?
- Can you put this data on your website?

Settlement Authority

- What does "authority to settle" mean?
- Should there be a different question to ask beneficiary than asking if they have full settlement authority, since they often don't appear to?

Miscellaneous

- Only housing counselors or properly trained attorneys should be able to refer to mediation. Housing counselors are the key to the FFA. Attorneys seldom know what questions to ask borrowers.
- We are losing our one housing counselor program locally. Is anything being done statewide to prevent closure and loss of housing counselor programs?
- Under what circumstances can I as a case manager/coordinator leave off the borrower? I thought in the interest of transparency, the borrower should be included even if the lender leaves them off and borrower rep says they are in contact with borrower.
- Why not require application for mediation to include all Borrower's package?

- Can you identify the mediators who also do advocacy for lenders or borrowers?
- Build in a second session for mediators to use as leverage
- Regarding CFPB, HAMP, FFA, etc., what trumps which? Also please have someone other than borrower's advocates explain – too one-sided
- Which boxes in the FDIC Mod in a Box are we required/expected to adjust? Obviously income, BPO, but re-default rates, the interest rates in the upper left? Those seem tricky to figure out
- Why not do mediations by "facetime?"
- Federal guidelines non-HAMP successor bound by HAMP?
- When a borrower accepts a permanent mod, how do you fill out the sections?
 - Interest rate reduction % change
- What is the legislative history behind RCW 61.24.163 (10)(c)?
- A TPP is not a "resolution that avoids foreclosure." It is not a final agreement. DO NOT report it as a final agreement reached.
- What do I do with a take it now or leave it offer by the beneficiary?
- Are private mediators supposed to go by ResWA guidelines? If not, what do they use? Is that ok to have different fees if consistency is desired?
- You are saying "you guys" a lot. Look around we are mostly all women folk.
- PLEASE do CLEs at very end and dismiss everyone who doesn't need them so it's not a waste of their time!!!
- Please set us up for CLEs ahead of time. Self-reporting is really inefficient for this many participants
- Stop calling this process "mediation" – it sours expectations
- Paid for conference calls
- Can we send case back to Commerce if we are unable to reach beneficiary?
- In amendment process – seek authority for mediator to assess reschedule fee against party responsible for delay
- Put a question on the referral form – Is translation needed?
- Please update Commerce guidelines to say that if there is a question as to who the beneficiary is that the borrowers rep needs to go back to Commerce